

Proposed Decree for the Creation of an Investor Protection Fund in Egypt

The Egypt Capital Markets Development Project

DECREE FOR THE CREATION OF AN INVESTOR PROTECTION FUND IN EGYPT

Introduction

This draft prime ministerial decree, submitted by the Egypt Capital Markets Development (CMD) project, is for the establishment of an investor protection fund (IPF) in Egypt. The fund will insure securities investors against loss of cash and securities caused by the insolvency or bankruptcy of a securities intermediation firm. The decree was drafted with the assistance of Morris Simkin from CMD's U.S.-based legal subcontractor Winston & Strawn. Mr. Simkin, an experienced and former U.S. Securities and Exchange Commission (SEC) lawyer, was involved in the creation of the U.S. Securities Investor Protection Corporation (SIPC).

CMD's report, "The Elements of an Investor Protection Fund in Egypt," recommends the major aspects and features of the IPF. These elements have been incorporated into the decree. CMD looks forward to discussing the report and decree with CMA Chairman Abdel Hamid Ibrahim and his senior staff. After the decree and basic elements of the fund are approved by the CMA, CMD will finalize and deliver draft executive regulations to the decree for adoption by the CMA.

Decree of the Prime Minister

The Prime Minister

After viewing Law No. 95 for the year 1992 promulgating the Capital Market Law and its Executive Regulations,

And upon a proposal of the Board of Directors of the Capital Market Authority dated October , 2000 as presented by the Minister of Economy and Foreign Trade

And in pursuance of Article 23 of Law No. 95 for the year 1992 mentioned above

Has Decided

First:

There is herewith established the Investor Protection Fund (the "IPF") as a separate and autonomous Entity. The IPF shall have the powers, rights, duties and authorities set forth herein and in the Executive Regulations adopted pursuant to this Decree.

Second:

The participants in the IPF shall be each company now or hereafter engaged in any of the following activities:

- a) brokerage in securities; and
- b) formation and management of securities portfolios, and formation of investment funds (mutual funds)

hereafter referred to as "Participants" in the aggregate and individually as a "Participant".

Each Participant shall be subject to the rules, regulations and directives issued by the IPF and the Executive Regulations adopted by the Authority, which are applicable to it.

Third:

The IPF shall insure the customers of Participants against loss due to the insolvency or bankruptcy of the Participant or against such other loss as the IPF may determine is necessary or appropriate in order to carry out the purpose and intent of this Decree. Customers shall include, among others, (1) persons and entities which have left money, securities or both in the possession or control of a Participant, and whose money, securities or both are not held in the name of the beneficial owner thereof (hereafter such persons or entities are referred to as "Customers" in the aggregate and individually as a "Customer"). A Participant shall not be

deemed a Customer of another Participant for purposes of this Decree, the IPF and the Executive Regulations adopted pursuant hereto.

Fourth:

The IPF shall be operated and controlled by a Board of Directors consisting of nine (9) persons. The Prime Minister shall appoint the Chairman of the Board of Directors of the IPF and its eight other members as follows:

- (a) One person, nominated by the Authority, who is not a board member or employee of the Authority;
- (b) One person nominated by the Minister of Economy and Foreign Trade;
- (c) One person nominated by the Central Bank of Egypt;
- (d) One person nominated by the Cairo and Alexandria Stock Exchanges;
- (e) Two persons nominated by the Egyptian Capital Markets Association; and
- (f) Two persons, selected by the Prime Minister, representing the investing public and who are not employed by any Participant, receive a material portion of their revenue from a Participant or are dependent upon a person who receives a material portion of their income from a Participant.

The Prime Minister may, at any time and from time to time, remove any person appointed by him, and fill any vacancies in the Board arising from the death, resignation or incapacity of a director. The Authority may, from time to time, recommend to the Prime Minister the removal of any one or more persons as directors.

Fifth:

Upon determination by the Board or its duly authorized designee that the protection of the IPF is necessary, the IPF shall pay to each Customer of a Participant a sum equal to the amount of loss that that Customer has suffered. The determination of the Board or its designee that the protection of the IPF is necessary and the amount of loss to be paid to a Customer shall be pursuant to the rules of the IPF. In determining the amount of loss a Customer has suffered, the IPF shall give no effect to any recoveries the Customer may receive from the IPF and recoveries actually received by the Customer from the affected Participant prior to the date as of which the IPF computes the amount of loss that the Customer has suffered. In no event shall payment by the IPF to any one Customer be more than LE_____ or such sum as may be prescribed by the Authority in an Executive Regulation or the IPF in a rule, each as adopted or amended from time to time. Such payment shall only be made in exchange for an assignment to the IPF of all claims that such Customer may have against the Participant. If the Customer believes that the determination by the IPF that the Customer is not entitled to coverage as a Customer or that the amount the IPF determines to pay is less than the Customer is entitled to, that Customer may

appeal the IPF's determination to the Authority. A Customer may choose not to assign its claims to the IPF. In such case, the IPF shall make no payment to the Customer, and the Customer may prosecute its claim against the Participant to the fullest extent permitted by law.

Sixth:

The IPF, as assignee of the claim of a Customer of a Participant, shall have all the rights and remedies of the Customer as against the Participant and others and shall have the right to participate, to the fullest extent permitted by law, in the bankruptcy or insolvency proceeding of that Company. The IPF shall take all necessary or appropriate action to recover the amount that a Customer, who has received payment from the IPF pursuant to this Decree, could recover on account of any claim assigned to the IPF pursuant to this Decree from the Participant or third parties. Except in the case of fraud by the Customer, the IPF shall not proceed against the Customer for such claims. The IPF's recovery may be more than, the same as or less than the amount paid by the IPF to that Customer. The IPF may retain attorneys, accountants and other professionals to advise and represent it. The IPF shall prosecute, defend and may settle its claims and claims against it to the fullest extent permitted by law.

Seventh:

The Board of the IPF shall adopt and may amend rules, from time to time, covering the following:

- a) The conduct, operations, practices and procedures of the IPF;
- b) Determining (i) the Participants and the Customers which will be covered by the IPF, (ii) which Participants will, and the extent to which they will, be subject to the rules, regulations and directives of the IPF, and (iii) the amount of coverage the IPF shall extend to any Customer;
- c) The method and manner by which Customers of Participants shall be identified, the amounts owed them determined and payments thereof made;
- d) The method and manner by which the IPF shall obtain funds, make assessments upon the Participants, and the amounts thereof and the provision for other sources of funding for the IPF;
- e) The adoption and enforcement of rules and regulations:
 - (1) For the safe and sound operations of the Participants;
 - (2) For each Participant to obtain insurance against loss due to the error or omission of any of its officers, directors or employees;
 - (3) To assure the protection of the Customers of Participants;

(4) To assure the safety of the IPF's funds; and

(5) To assure that the IPF is able to, and does, exercise its powers, duties and authorities, as provided for or contemplated in this Decree;

Eighth

Except as otherwise provided for in Article Fifth and Article Seventh, the rules, regulations, resolution's, and directives of the IPF, other than those of a ministerial or clerical nature, shall not become effective until approved by the Authority. The Authority shall have the right, from time to time, to compel action by the IPF, including among others, adopting, amending or repealing rules, regulations, resolutions and directives as to the scope of IPF coverage and payment, and compelling action by the IPF where the IPF has failed or omitted to act or acted less than fully in the opinion of the Authority. The Authority shall have the right to adopt and amend, from time to time, Executive Regulations regarding:

- a) Periodic reporting to the Authority, the Prime Minister and the Participants of the activities, operations and financial condition of the IPF, including, among others, an annual audit of the IPF's financial condition, by a public accountant acceptable to the Authority, and an annual report on the activities of the IPF;
- b) The right of the Authority to examine and inspect the books and records of the IPF and to take testimony and statements from officers, directors, employees and agents of the IPF and third parties, as well as to compel the production of documents by any of the foregoing. The Authority may publish a report of any such examination and set forth therein its findings and recommend actions by the IPF or others in response to its findings. The Authority shall have the right to take action against the IPF and any of its officers, directors, agents and employees for failure to comply with or enforce this Decree, the Executive Regulations adopted hereunder or the rules, regulations, resolutions and directives of the IPF. The Authority may, from time to time, direct that the IPF, its officers, directors, agents and employees take actions specified by the Authority to correct any deficiencies, failures to act, omissions or inefficient acts as determined by the Authority; and
- c) Prohibiting any person who was an officer, director, key employee or the beneficial owner of more than 15% of a Participant for which the IPF has made a payment to a Customer from being an employee, officer, or director of a Company and from beneficially owning more than 5% of the equity of any Company, or being a creditor in the amount of more than LE ____ of a Participant. Such order may provide that it will cease to be of effect if such person shall reimburse the IPF the full amount of all

payments to Customers of the affected Participant with interest at a specified or determinable rate until the date of payment.

Ninth:

A Participant which has not complied with the rules, regulations and directives of the IPF and the Executive Regulations, or failed timely to pay its assessments to the IPF shall not engage in any business activity, other than the immediate liquidation of its business. Any Company in violation of any of the rules, regulations, or directives of the IPF, the Executive Regulations or which has not timely paid its assessment shall immediately give written notice thereof to the IPF and the Authority, and shall cooperate with, and take such actions or refrain from taking such actions as the IPF, the Authority or both of them shall, from time to time, direct.

Tenth:

The IPF shall be established not later than , 2000. On or before that date, the rules set forth herein and the Executive Regulations that the Authority may adopt to implement this Decree shall become effective. As of that date, each Participant shall make such filings with the IPF and pay to the IPF the assessments provided for by the IPF.

IN WITNESS WHEREOF, the Prime Minister has issued this Decree on the date and at the place set forth below:

Date:

Place: